

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO 62 OF 1997

IN

SPECIAL CIVIL APPLICATION NO 3609 OF 1983

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER
and
MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed
to see the judgements ? YES

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2. To be referred to the Reporter or not ? NO

3. Whether Their Lordships wish to see the fair copy
of the judgement? NO

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder ? NO

5. Whether it is to be circulated to the Civil
Judge ? NO

BAHADURSINH Mulsinh

Versus

KUTIANA NAGAR PANCHYAT

Appearance:

NANAVATY ADVOCATES for Petitioner
M/S THAKKAR ASSOC. for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MISS JUSTICE R.M.DOSHIT

ORAL JUDGEMENT

Admitted. Mrs. Pahwa, learned counsel for the respondent-Panchayat appears and waives service of notice of admission. In the facts and circumstances of the case, the matter is taken up for final hearing today.

This appeal is directed against the judgment and order passed by the learned Single Judge, by which the learned Single Judge partly allowed the appeal filed by the respondent-Panchayat depriving the appellant of back wages. It is not disputed by and between the parties that the Labour Court by an Award dated February 18, 1983, ordered reinstatement of the workman with continuity of service as well as full back wages. Being aggrieved by the said order, the Nagar Panchayat approached this court by filing the above petition. So far as the reinstatement is concerned, learned Single Judge did not interfere with the Award passed by the Labour Court, but regarding back wages, the learned Single Judge observed that it appeared that the workman was gainfully employed for some time and even after he was not in service, he was doing work with his mother. In these circumstances, it could not be said that he was not gainfully employed elsewhere during the period for which he was out of employment. In view of the above observations, the learned Single Judge partly allowed the petition by confirming the Award as regards the reinstatement, but set aside so far as back wages were concerned.

The learned counsel for the appellant contended that the learned Single Judge has committed an error apparent on the face of the record in depriving the appellant of back wages. Looking to the record as also the finding recorded by the Labour Court as well as considered by the learned Single Judge, it appears that the appellant was gainfully employed for some time and even thereafter he was doing work in a hotel business. Under these circumstances, it can not be said that by depriving of back wages, the learned Single Judge has committed any error of law which requires interference in appeal. But one thing clearly appears from the record that the Award was passed by the Labour Court on February 18, 1983, whereas the respondent-Panchayat actually reinstated the appellant workman on August 18, 1983 i.e.

exactly after six months. In our opinion, therefore, the appellant workman ought not to have been deprived of the legitimate benefits to which, otherwise, he would be entitled, in view of an order of reinstatement passed in his favour, which was also confirmed by the learned Single Judge.

In the result, this appeal is partly allowed. So far as the reinstatement is concerned, no order is necessary in view of the fact that that part of the Award is confirmed by the learned Single Judge and it is not disputed that the appellant was actually reinstated with effect from August 18, 1983. Regarding back wages, for a period from February 18, 1983 to August 18, 1983, it is directed that the appellant would be entitled to full back wages for a period of six months and it is accordingly ordered. For the rest of the period, in our opinion, the learned Single Judge has not committed any error in not granting back wages and hence to that extent, no interference is called for. In the facts and circumstances of the case, no order as to costs.

JOSHI